

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

AMMIE DARLENE HACKER,

Plaintiff,

v.

CIVIL ACTION No. 5:20-CV-132
Judge Bailey

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of the United States Magistrate Judge Robert W. Trumble [Doc. 20]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Trumble filed his R&R on February 18, 2021, wherein he recommends that Plaintiff's Motion for Summary Judgment [Doc. 12] be denied, Defendant's Motion for Summary Judgment [Doc. 16] be granted, the decision of the Commissioner be affirmed and the case be dismissed with prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984).

An ALJ's findings will be upheld if supported by substantial evidence. See **Milburn Colliery Co. v. Hicks**, 138 F.3d 524, 528 (4th Cir. 1998). Substantial evidence is that which a "reasonable mind might accept as adequate to support a conclusion." **Hays v. Sullivan**, 907 F.2d 1453, 1456 (4th Cir. 1990) (quoting **Richardson v. Perales**, 402 U.S. 389, 401 (1971)). Further, the "possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." **Sec'y of Labor v. Mutual Mining, Inc.**, 80 F.3d 110, 113 (4th Cir. 1996) (quoting **Consolo v. Fed. Mar. Comm'n**, 383 U.S. 607, 620 (1996)). In determining whether substantial evidence supports the ALJ's findings, the reviewing court should not "reweigh conflicting evidence, make credibility determinations, or substitute our judgment for that of the ALJ." **Johnson v. Barnhart**, 434 F.3d 650, 653 (4th Cir. 2005).

The issue is not whether a claimant is disabled, but whether the ALJ's finding of disabled or not disabled is supported by substantial evidence and was reached based upon a correct application of the relevant law. **Meyer v. Astrue**, 662 F.3d 700, 704 (4th Cir. 2011) (citing **Craig v. Chater**, 76 F.3d 585, 589 (4th Cir. 1996)); see also **Ashcraft v. Berryhill**, 2017 WL 4354889, at *5 (N.D. W.Va. 2017) ("An administrative decision is not subject to reversal merely because substantial evidence would have supported an opposite decision.").

Here, objections to Magistrate Judge Trumble's R&R were due within fourteen (14) days of receipt of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Having filed no objections within that time frame, plaintiff has waived her right to both *de novo* review and to appeal this Court's Order pursuant to 28 U.S.C. § 636(b)(1). Consequently, the R&R will be reviewed for clear error.

CONCLUSION

Having reviewed the R&R for clear error, it is the opinion of this Court that the R&R [Doc. 20] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. The decision of the Commissioner is **AFFIRMED**. Accordingly, Plaintiff's Motion for Summary Judgment [Doc. 12] is hereby **DENIED**. Furthermore, Defendant's Motion for Summary Judgment [Doc. 16] is hereby **GRANTED** and this matter is hereby **DISMISSED WITH PREJUDICE**. This Court further **ORDERS** that this matter be **STRICKEN** from the active docket of this Court and **DIRECTS** the Clerk to enter judgment in favor of defendant.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: March 5, 2021.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE